no merit in this point. The appellants are alleged to have failed to take certain action contrary to Orders issued. By pleading guilty they clearly knew what the orders were and that they had disobeyed the orders. If they did not know what the orders were or wished to state that they had not received any orders which they disobeyed they would have pleaded not guilty.

The appeal of each of the appellants is dismissed.

Appeals dismissed.

THE FIRM OF T. AR. CT.
v.
THE FIRM OF S. V. K.R.

[Orig. Civ. Juris. (Spenser Wilkinson, J.) October 9, 1951]

[Penang — Civil Suit No. 192 of 1949]

Agency — Agencies during occupation period — Thavanai letters — Money borrowed on Thavanai letters — Working of Chettiar firms.

Money was borrowed on Thavanai letters and repaid during the occupation.

This was a case where two Chettiar firms worked as a pair — a smaller firm working with a larger firm — and the agent of the smaller firm worked under the general supervision of the agent of the larger firm. In the circumstances of the case a payment made to the supervising agent who was looking after the interests of the smaller firm was held to be a payment to the ostensible agent of the smaller firm.

CIVIL SUIT.

F. G. Pooley for the plaintiffs.

R. D. Hume and *Ong Huck Lim* for the defendants.

The facts of the case appear sufficiently from the judgment.

Cur. Adv. Vult.

Spenser Wilkinson, J. : — In September, 1941 the defendant firm borrowed a sum of $5,000 on two *Thavanai* letters, each dated 16th September, 1941 in the following circumstances :

Sithambaram Chettiar, who was then the agent of the defendant firm approached one Annamalai Chettiar, at that time the agent of the firm of O.RM.M.SP.SV. (which firm I shall refer to herein as O.RM.) for a loan of $5,000 on a *Thavanai* letter. Annamalai Chettiar gave Sithambaram Chettiar a cheque in favour of the defendant firm for $5,000 drawn by the plaintiff firm (T.AR.CT.) by their then local agent Arunasalam Chettiar. Annamalai Chettiar gave to Sithambaram Chettiar two draft *Thavanai* letters, one for $2,000 and one for $3,000 for him to copy and sign, which he did. It is in respect of the latter for $3,000 that this action is now brought.

On the 8th December, 1941 when War broke out in Malaya Annamalai Chettiar of O.RM. and Arunasalam Chettiar the agent of T.AR.CT., together went and lived at the Waterfall Temple and took with them there most of the account books and documents of their respective firms. They came to town daily for the next few days. On the 11th December, 1941, when Penang was bombed, Arunasalam Chettiar was killed and No. 140, Penang Street, the place of business of O.RM. and T.AR.CT. and other Chettiar firms was destroyed by a direct hit. Thereafter Annamalai Chettiar carried on the joint businesses of the firms of O.RM. and T.AR.CT. and continued to do so until October, 1946, when he returned to India.

On the 25th June, 1943 the defendants paid to Annamalai Chettiar the principal and interest then due in respect of the loan of $3,000 and received back the appropriate *Thavanai* letter cancelled by Annamalai Chettiar, purporting to act on behalf of the firm of T.AR.CT. The plaintiffs' contention in this action is that the defendants have not repaid the money to any person authorised to receive it, and they are, therefore, still liable to T.AR.CT. for the money.

The *Thavanai* letter upon which the action is brought acknowledges the receipt of the sum of $3,000 and states : "We have credited this three thousand dollars in the name of T.AR.CT. Charity Trust Fund through you from current date .....". The letter concludes with these words :—

"We hereby agree to pay the principal and interest to your order at Penang on due date and get back this letter endorsed."

At the top left-hand corner of the letter appears the *vilasam* of the defendant firm as makers of the letter and at the top right-hand corner it has as addressee T.AR.CT., Penang. I accept the evidence which was given to the effect that the expression "you" and "your" in the body of the letter refers to the addressee T.AR.CT. This is a usual form of *Thavanai* letter, and I do not think that the letter in question really admits any other reasonable construction.

In my opinion, therefore, it is clear on the face of the letter that it was the duty of the defendants to repay this money to the firm of T.AR.CT. or to an agent of that firm with authority to receive the money on their behalf.

Some of the witnesses for the defendants gave evidence to the effect that where there is a loan upon such a letter the money is always repayable to the

actual person who lent it, the suggestion being in this case that because the transaction was carried out through the agent of the firm of O.RM. the money was repayable to O.RM. I am unable to accept this as a general proposition. In so far as such evidence tends to vary the terms of the letter, it is, I think, inadmissible; and I would in any event reject such evidence, because it seems to me this would reduce the meaning of *Thavanai* letters to an absurdity. To my mind the money borrowed on this letter was clearly repayable to the firm of T.AR.CT. or their agent and to no one else.

The idea, however, that the money due on such a letter may legitimately be paid back through the person who actually made the loan is one that might be supported, not on the ground of any custom or course of business, but on the ground that the person who actually lends the money is in so doing acting as the agent of the firm to whom the letter is addressed. I do not think that this circumstance by itself would be sufficient to constitute the relationship of principal and agent between the person who actually handed the money over and the borrower, but I think it is one of the circumstances to be taken into account in considering the whole question of agency in any particular case.

The only witness called for the plaintiffs was the plaintiffs' present agent and his only knowledge of the transaction is derived from the account books and documents. His oral evidence, therefore, was of little value, but it is of interest to observe that his attitude in cross-examination was much more that of a principal complaining that his agent had not done as well for him as he should have done than of a man repudiating all authority on the part of a purported agent. The cross-examination of the defendants' witnesses by counsel for the plaintiffs confirmed the impression that the plaintiffs' real complaint in this case is not directed so much to the fact that O.RM. collected the money as to the use to which that money was put after collection.

A good deal of evidence was given to the effect that Chettiar firms often work in pairs — a smaller firm working with a larger firm — and that in such cases the agent of the smaller firm works under the general supervision of the agent of the larger firm; and there was specific evidence that the firm of O.RM. and T.AR.CT. were two of such firms working together and that O.RM. was the larger firm and T.AR.CT. was the smaller firm. On this point I accept the evidence of the defendants' 5th witness, Ramasamy Chettiar, who had worked in the same building as these firms for many years before the War. He stated that although the firm of T.AR.CT. had a separate agent they had no clerks or assistants because the staff of O.RM. used to look after the firm. Similar evidence was given by Annamalai Chettiar himself, the agent of O.RM. and when asked what object was there in T.AR. CT. having a separate agent if the firm was to be run by the O.RM. agent, he stated that the agent of the smaller firm is meant for writing the accounts of the firm, but always takes instructions from the agent of the bigger firm.

I think this evidence of the close relationship between the two firms is borne out by the very large volume of business shown to have been done by the two firms jointly, most of the investments being in the name of O.RM. Although they each had some separate transactions they were virtually joint firms.

I have come to the conclusion that the true position with regard to the two firms of O.RM. and T.AR.CT. was that at the time when both agents were alive both were general agents of both firms, although the agent of O.RM. had a dominant voice in the management of both. It was clearly necessary for the T.AR.CT. firm to have someone in Penang with a power of attorney who could sign cheques, deeds and other necessary documents for T.AR.CT. under that power, but the fact that a firm has an agent with a power of attorney does not preclude that firm from having other agents with general powers to act on their behalf in matters which do not necessitate a written power of attorney. It seems to me that in effect, in this case, Annamalai Chettiar was the agent who decided questions of policy and Arunasalam Chettiar carried out that policy by signing the necessary documents such as cheques or deeds. In my opinion, therefore, Annamalai Chettiar was a general agent of both firms, so that when Arunasalam Chettiar was killed it was right that he should take charge of the books and business of the T.AR.CT. firm and carry on their business until he was in a position to receive further instructions from India.

I am unable to find in the letters written by Kuppan Chettiar or Ramasamy Chettiar (partners of the T.AR.CT. firm in India) after the War anything that amounts to an express ratification of Annamalai Chettiar's acts during the occupation. I think however, that those letters tend to show that Annamalai Chettiar was looked upon by the firm of T.AR.CT. as having been the agent of both firms during the occupation period. I think it is of some significance

that although Annamalai Chettiar returned to India in June, 1946 taking copies of the accounts with him there is no evidence that any protest was made by the T.AR.CT. firm in regard to his activities during the occupation until June, 1948, by which time other causes of friction between T.AR.CT. and O.RM. had arisen.

On the evidence as a whole I am satisfied that the defendants made repayment of this loan to an ostensible agent of the plaintiff firm, who held the document, and the plaintiffs' claim therefore fails.

Claim dismissed.

MOHAMED HASSAN
v.
PUBLIC PROSECUTOR.

[Orig. App. Juris. (Whitton, J.) November 27, 1951]

[Kota Bahru — Criminal Appeal No. 30 of 1951]

Evidence — Evidence of accomplices — Conviction on uncorroborated evidence of accomplices.

The Appellant in this case, was charged before the President, Sessions Court, Kota Bharu, on 13th August, 1951, with three offences punishable under Section 165 of the Penal Code. He was acquitted on the first and third charges; on the second he was convicted and sentenced to one month's simple imprisonment. The second charge reads as follows:—

"That you, on the 4th March, 1948, at Pasir Puteh, district of Pasir Puteh, Kelantan, being a public servant in the employ of the Government of the State of Kelantan, to wit District Officer of the District of Pasir Puteh, obtained for yourself a valuable thing viz: a sum of money $200 without consideration from Lua Lian Chai whom you knew to be likely to be concerned in business having connection with your official function under the Kelantan Rubber Supervision Enactment No. 10 of 1934 and you thereby committed an offence punishable under Section 165 of the Penal Code."

The main evidence for the prosecution on this charge was that Lua Lian Chai, who was alleged to have paid to the Appellant the $200 mentioned in the charge, his brother-in-law Tan Geok Peng, and an account book produced by Lua Lian Chai purporting to contain the record made at or about the time (4th March, 1948) of the alleged payment. The learned President in accepting this evidence directed himself, in view of the decision in **Trowell v. Public Prosecutor**[1], that he was convicting on uncorroborated evidence of accomplices.

Mr. Bostock Hill, Counsel for the Appellant, contended that the "real point of the appeal" was that it was a conviction on accomplice evidence without there being **independent** corroborative evidence. He conceded that such a conviction was not illegal, but submitted that it should only occur in a very **exceptional** case, and that this was not an exceptional case — at least in the contemplated sense of the term.

Held, (1) that as the learned President had adequately kept in mind the dangers of convicting on this kind of evidence there is no reason to hold that the conviction was against the evidence and (2) that as regards the submission that convictions on the uncorroborated evidence of accomplices should only be recorded in very exceptional cases, no one will question the truth of such submission in so far as it is correct statement of practice, which it is salutary to keep in mind, but, if it is suggested that in some way the words "very exceptional" may be taken to modify or qualify the rules in **Rex v. Baskerville**[4] as set out and applied in the Malayan decisions there is no authority for such a proposition. Appeal dismissed.

Cases referred to:—

(1) *Trowell v. Public Prosecutor* (1946) M.L.J. 41; (1941) F.M.S.L.R. 77.
(2) *Rex v. Ambler* (1938) 2 W.W.R. 225.
(3) *Tay Choon Nam v. Rex* (1949) M.L.J. 157.
(4) *Rex v. Baskerville* (1916) 2 K.B. 658.
(5) *Rex v. Lim Yam Hong* 14 S.S.L.R. 152.

CRIMINAL APPEAL from Sessions Court, Kota Bahru.

A. J. Bostock Hill for the appellant.

L. A. Massie (Federal Counsel) for the Public Prosecutor.

Cur. Adv. Vult.

Whitton, J. : — Mohd. Hassan bin Sulaiman, the appellant in this case, was charged before the President, Sessions Court, Kota Bharu, on 13th August, 1951, with three offences punishable under section 165 of the Penal Code. He was acquitted on the first and third charges; on the second he was convicted and sentenced to one month's simple imprisonment. The second charge reads as follows:—

"That you, on the 4th March, 1948, at Pasir Puteh, district of Pasir Puteh, Kelantan, being a public servant in the employ of the Government of the State of Kelantan, to wit District Officer of the District of Pasir Puteh, obtained for yourself a valuable thing viz: a sum of money $200 without consideration from Lua Lian Chai whom you knew to be likely to be concerned in business having connection with your official function under the Kelantan Rubber Supervision Enactment No. 10 of 1934 and you thereby committed an offence punishable under section 165 of the Penal Code."

The main evidence for the prosecution on this charge was that of Lua Lian Chai, who was alleged to have paid to the appellant the $200 mentioned in the charge, his brother-in-law Tan Geok Peng, and an account book produced by Lua Lian Chai purporting to contain the record made at or about the time (4th March, 1948) of the alleged payment. The learned President in accepting this evidence directed himself, in view of the decision in *Trowell v. Public Prosecutor*[1] that he was convicting on uncorroborated evidence of accomplices. I am satisfied from his grounds of judgment that he adequately kept in mind the dangers of convicting on this type of evidence.

What Mr. Bostock Hill, Counsel for the appellant, called the "real point of the appeal" was that it was a conviction on accomplice evidence without there being *independent* corroborative evidence. It was conceded